

1 where necessary so that -- all of the things that needed to  
2 be done.

3 And quite frankly, you know, this is something  
4 that was one of the things that needed to be done. And it  
5 got done. But it did not get done immediately.

6 JUDGE SIPPEL: March to May is a pretty long time  
7 for a -- I mean, a document is not -- it doesn't come up to  
8 the complexity certainly of the asset purchase agreement it  
9 would seem to me. You may not agree but --

10 MR. SPITZER: No, no. I'm trying to -- I think  
11 what Ms. Kiddoo is saying really captures the sense that  
12 there was a very complicated transition going on here.  
13 There were lawyers who had worked strenuously to close the  
14 transaction who then have a myriad of other things that  
15 needed to be done. Some of the lawyers at this table were  
16 involved negotiating the subcontract agreement.

17 And even though there may have been a meeting of  
18 the minds among the principals, back on, you know, March  
19 12th about what the general terms of that contract would be,  
20 there were drafts of the subcontract agreement going back  
21 and forth over the next couple of weeks and, you know, a  
22 hundred different issues in terms of making sure that this  
23 very complicated transaction got handled properly over that  
24 time period. So I'm not at all surprised that it took a few  
25 more weeks to get, you know, a formalization of the

1 understanding that had been entered.

2 MR. PETTIT: Well, it's also a matter, Your Honor,  
3 of the fact that there was an understanding. It was up and  
4 operating. The intention obviously was to put that in  
5 writing at some point. And as Mr. Spitzer said, it was  
6 begun to be negotiated when in fact it was working.

7 JUDGE SIPPEL: Well, yes, but who was in control  
8 at that time? I think that's what this is all about.

9 MS. KIDDOO: Bartholdi has been in control since -  
10 -

11 JUDGE SIPPEL: Well, I know that's what you're  
12 arguing and I know that's what you're saying the documents  
13 show. But you see that there is this hiatus when they were  
14 operating under some kind of an understanding that they  
15 didn't have anything that was signed, a very specific  
16 document, number one. Number two is who was -- how were the  
17 insurance companies -- where was the insurable interest at  
18 that point? Who was -- were the insurance companies being  
19 kept apprised of this?

20 MS. KIDDOO: The personal health insurance of the  
21 employees or --

22 JUDGE SIPPEL: No, no, no. Well, whatever you  
23 have in terms of your liability insurance and, you know,  
24 there must be insurable interest in terms of the services  
25 that are being provided.

1           MR. PETTIT: This is -- I'm sorry, Your Honor --  
2 insurance on the - these two individuals?

3           JUDGE SIPPEL: On the -- insurance on the assets,  
4 insurance on the -- you say all these assets were  
5 transferred. Was there insurance on those assets?

6           MS. KIDDOO: On the subscriber base and the name  
7 Liberty and those kinds of things, I think so.

8           JUDGE SIPPEL: No. Okay, then on those. But were  
9 there other assets that were transferred? Were there hard  
10 assets or were these all intellectual assets?

11          MS. KIDDOO: There was probably some inventory,  
12 maybe trucks, things like that. I'm sure that transferred.  
13 Your Honor, one of the things that -- you know, that  
14 happened here, when the agreements were signed on February  
15 20th, the parties contemplated that there would need to be a  
16 Hart-Scott-Rodino filing for the transaction. That would  
17 have given us 30 days to get some of these details done.  
18 There turned out to be no Hart-Scott-Rodino filing  
19 necessary.

20          As a result, we closed the deal much more quickly  
21 than was originally contemplated. That meant that some of  
22 these details -- for example, the fact the employees were  
23 not terminated by Bartholdi and hired by Freedom until March  
24 12th would seem to -- you know, would seem to be a little  
25 inconsistent with the contract. However, the fact of the

1 matter is the parties realized that they couldn't get it all  
2 done overnight and get all the paperwork done, all these new  
3 employees on the insurance plans and everything else. There  
4 needed to be some time.

5 So they agreed between themselves that that could  
6 wait for until the 12th. I mean, there were lots of details  
7 because of the speed to which this transaction ultimately  
8 closed after the agreements were reached that were worked  
9 out between the parties. And the subcontractor agreement is  
10 one of those details that took some time. And for whatever  
11 reason, there were other things going on. And review of  
12 drafts that went back and forth took extra days in between  
13 drafts.

14 MR. PETTIT: Your Honor, if I might speak to the  
15 question of control during what you described as the hiatus  
16 before the completion of this agreement. Mr. Price's  
17 affidavit I believe speaks to that. He describes these  
18 employees as being supervised by and required to report to  
19 John Tenetey and to Mr. Price, as well. And he says that  
20 they remained at all times ultimately responsible for the  
21 operation; that is, Mr. Tenetey and Mr. Price were  
22 responsible for the operations.

23 He goes on to say that consistent with terms of  
24 the agreements between Bartholdi and Freedom, "Bartholdi",  
25 and I will quote, "continues to own and control the

1 transmission and reception equipment used to provide  
2 microwave transmission services."

3 JUDGE SIPPEL: Well, no, the conclusions on the  
4 affidavits are very clear. What I'm trying to do is get --  
5 is just -- these are just questions that popped into my mind  
6 as I'm reading these documents.

7 MR. WEBBER: Yes, Your Honor, the Bureau I guess  
8 mirrors your questions or echoes them. The conclusions  
9 reached by Mr. Price in his declaration we hardly find the  
10 permantative of the issues. As the Commission learned in  
11 the LeStar proceeding, you can have declarations from people  
12 saying that they're doing certain things or that they will  
13 be doing certain things where the actuality is the complete  
14 opposite. And therefore, his declaration may be helpful,  
15 but it's far from determinative. And the Bureau is a little  
16 bit, I don't know, maybe dismayed at what appears to be a  
17 cavalier attitude expressed by Ms. Kiddoo of freedom by --  
18 apparently considering control just being a detail that they  
19 can reach later.

20 MS. KIDDOO: I think that's somewhat of a stretch  
21 of what I was saying, Your Honor. The fact of the matter is  
22 that control was very important and control has been and  
23 always will be so long as Bartholdi is providing microwave  
24 transmission facilities. Under its transmission services  
25 agreement, control will reside with Bartholdi. It has

1 always resided with Bartholdi.

2 MR. WEBBER: I'm sorry. I did misspeak. I mean  
3 that even something which really is as important as the  
4 subcontractor agreement which spells out what control will  
5 be is something that's just a detail because it -- the  
6 Bureau certainly considers it far more --

7 MS. KIDDOO: Your Honor, both parties were well  
8 aware at all times what control was and what obligations  
9 they have under the FCC's licensing rules. The fact that  
10 there was not a written agreement memorializing their  
11 understanding is not determinative of the fact that either  
12 company treated these things in any kind of cavalier manner  
13 or didn't -- or disregarded them.

14 JUDGE SIPPEL: Well, this is what I want to avoid  
15 the best I can. I mean, what I want to avoid is -- I don't  
16 want to get antagonisms voiced here this morning because we  
17 don't have time for it. But it just seems to me if -- to  
18 the extent that I've had exposure to Hart-Scott-Rodino work,  
19 that if you were thinking of Hart-Scott-Rodino, you  
20 certainly wouldn't have filed something with the Justice  
21 Department or the Federal Trade Commission without having  
22 that subcontract nailed down. I don't think that -- you're  
23 saying no. You're saying they wouldn't care about that?

24 MR. SPITZER: Your Honor, I don't think that was  
25 an issue. And in fact, when we did file with DOJ and the

1     FTC, as it turns out, they rejected our filing because there  
2     were certain thresholds that were not satisfied in terms of  
3     revenue and asset valuation, et cetera. But be that as it  
4     may, the filings were made with DOJ and the FTC, and then we  
5     were told that upon their review that there was no necessity  
6     to file.

7             JUDGE SIPPEL: Well, that's as far as they're  
8     going to go if you don't meet the threshold. That's as far  
9     as they're going to go. But I'm saying that if you actually  
10    -- but you said that you were gearing up to file with them.

11            MR. SPITZER: The filings were made and prepared  
12    in their entirety.

13            JUDGE SIPPEL: Well, I think that --

14            MR. SPITZER: Well, I can only say, Your Honor,  
15    that upon the advice of counsel who have known intimately of  
16    the inner workings of both the FTC and the DOJ anti-trust  
17    division, I don't think there was any ambiguity about the  
18    propriety of those filings and the fact that they were  
19    complete and ready to -- would have given very prompt  
20    approval.

21            JUDGE SIPPEL: All right. I hear you. Okay.  
22    As -- there's a Mr. Bruce Godfrey of Freedom that appears on  
23    one of the application forms that was attached to one of the  
24    pleadings. What is -- what is -- does he have any  
25    connection with the -- with the -- with any of these

1 licenses that are the subject of this proceeding or any of  
2 the facilities for which these are --

3 MS. KIDDOO: No, Mr. Godfrey -- I believe his  
4 title is chief financial officer, although I'm not -- it's  
5 something along those lines. But he does not have any  
6 duties or any responsibilities at all with respect to the  
7 licenses held by Bartholdi for the facilities. Now, just to  
8 be clear, the licenses applications which were filed by  
9 Freedom will share some transmitter sights, I think maybe  
10 even one receive sight under the -- in compliance with the  
11 Commission's rules with some Bartholdi sights.

12 The fact is that both companies will have access  
13 to those transmitters pursuant to the Commission's rules.  
14 So in that sense, I suppose Mr. Godfrey if that's what your  
15 question was aiming at.

16 JUDGE SIPPEL: Well, what I'm trying to do -- is  
17 there a parallel between what Mr. Godfrey does and what Mr.  
18 Price does? I mean, Mr. Price does certain things with  
19 respect to the Bartholdi assets. Am I framing that question  
20 correctly?

21 MS. KIDDOO: Yes, Mr. Godfrey is probably not the  
22 counterpart in the RCN organization to Mr. Price in that  
23 respect. I think that Mr. Price's counterpart would be  
24 another gentleman by the name of Dick Sayre.

25 JUDGE SIPPEL: How do you spell that name?



1 MS. KIDDOO: S-A-Y-R-E, I believe.

2 JUDGE SIPPEL: Thank you. And David McCourt of C-  
3 TEC, does he play any role in terms of these assets that --

4 MS. KIDDOO: Well, in terms of this, he is the  
5 president of the company or the -- I don't know. With  
6 respect to Freedom, he may actually just be a board member.  
7 I don't think he's actually the president.

8 JUDGE SIPPEL: Well, what -- does he have any  
9 contacts with Mr. Price? I mean, does RCN -- does C-TEC tie  
10 in with RCN? It does, doesn't it?

11 MS. KIDDOO: Yes.

12 JUDGE SIPPEL: And RCN now has an -- is it RCN  
13 that has -- RCN has -- let me back up on this part.  
14 Bartholdi has the interest in Freedom, right? The 19.9  
15 percent?

16 MS. KIDDOO: They have 19.9 percent interest. RCN  
17 holds the other 80.1, if my math is correct.

18 JUDGE SIPPEL: Now, let me rephrase my question  
19 with respect to David McCourt. Does he play any -- does he  
20 share any responsibilities with Mr. Price for any of the  
21 assets that are the subject of this litigation or this case?

22 MS. KIDDOO: No, not at all.

23 JUDGE SIPPEL: They've got -- that's separate and  
24 across?

25 MS. KIDDOO: Neither RCN nor Freedom nor C-TEC

1 have any interest whatsoever in Bartholdi.

2 JUDGE SIPPEL: I know they don't have a -- well,  
3 what I'm saying is they don't play any role at all in terms  
4 of what's being done?

5 MS. KIDDOO: Other than the fact that some of  
6 their employees are subcontracting to Bartholdi to maintain  
7 the system.

8 JUDGE SIPPEL: That brings us back to the  
9 subcontract agreement.

10 MS. KIDDOO: That's the only connection.

11 JUDGE SIPPEL: And what about the -- what is the -  
12 - let me go back again to these interests and my question  
13 about the insurable interest although I don't want to focus  
14 on the insurable interest any more. This 80 percent  
15 interest that was reported in the 10-K and I guess it was --  
16 well, let me just stay with the 10-Ks -- that paraphrasing  
17 now, but it was reported there that -- that the Freedom  
18 group, I'll say, was acquiring an 80 percent interest in  
19 Liberty -- then Liberty Cable. What was --

20 MS. KIDDOO: That's not correct.

21 JUDGE SIPPEL: That's not correct.

22 MS. KIDDOO: No. That was the press'  
23 interpretation loosely of what the 10-Ks said.

24 JUDGE SIPPEL: No, I read the 10-Ks. The 10-Ks  
25 said that in two places.

1 MS. KIDDOO: Well, part --

2 JUDGE SIPPEL: I mean the excerpts for the 10-Ks  
3 that were attached to Mr. Beckner's motion.

4 MS. KIDDOO: Well, remember -- remember the name  
5 issue in terms of the transfer of that asset. It was  
6 certainly not the transaction. The transaction was not an  
7 acquisition of any interest in Bartholdi -- the company that  
8 is now Bartholdi Cable that was Liberty Cable. There was no  
9 acquisition of stock or --

10 JUDGE SIPPEL: It didn't say it was stock. It  
11 didn't say. That's what I was curious about. It didn't say  
12 what it was.

13 MS. KIDDOO: It was in assets. We purchased --

14 JUDGE SIPPEL: Eighty percent of their assets?

15 MS. KIDDOO: -- 80 percent -- well, no. Mr.  
16 Martin may be able to help out. He understands these  
17 transactions better than I do.

18 MR. MARTIN: There's a new entity formed, Freedom  
19 New York, L.L.C. that at the closing of the transaction  
20 paid to the cable company which changed it's name to  
21 Bartholdi -- paid that entity 25 million dollars; gave them  
22 a note for 15 million dollars which is the amount that was  
23 unpaid for the assets. And it also issued to I think it's  
24 Liberty Cable Company, now Bartholdi, a 20 percent interest  
25 of the new company all this consideration for the purchase

1 by Freedom New York, L.L.C. of the assets of Liberty Cable  
2 Company as defined by asset -- not the totality of those  
3 assets, those assets defined in the asset purchase  
4 agreement.

5 JUDGE SIPPEL: Well, that's what I -- that's what  
6 struck my curiosity. How did they come up with a figure of  
7 80 percent in the 10-K?

8 MS. KIDDOO: Do you have a cite to that because  
9 I'm not seeing the language?

10 JUDGE SIPPEL: I have a copy -- yes, I didn't  
11 bring my copy in the courtroom with me, but I remember  
12 reading it.

13 MR. SPITZER: I think 80 percent roughly -- 80  
14 percent equates to what happened at the end of the day where  
15 RCN corporation ends up owning roughly 80 percent of the  
16 buyer and Liberty Cable Company owns 20 percent of the  
17 buyer.

18 MS. KIDDOO: Yes. What it says, Your Honor, is  
19 that RCN enters into an asset purchase agreement with  
20 Liberty Cable to purchase an 80 percent interest in certain  
21 private cable systems in New York. In other words, the  
22 system was purchased and all of the assets that were covered  
23 by the asset purchase agreement were moved into Freedom New  
24 York. And what RCN purchased was an 80 percent interest in  
25 Freedom New York and the sellers purchased a 19.9 percent

1 interest in Freedom New York.

2 So what happened was all of the assets got  
3 transferred into Freedom New York. And RCN, Peter Cuit  
4 (phonetic) and Sons purchased was an 80.1 percent interest  
5 in that company. So in other words, what it says is an 80  
6 percent interest in certain private cable systems. The  
7 systems were moved into Freedom New York and we purchased  
8 80.1 percent of that. The Bartholdi principals purchased  
9 19.9 percent interest in that is what happened.

10 JUDGE SIPPEL: All right. I hear you. And  
11 they've got an equity interest of 19.9 percent, right?

12 MS. KIDDOO: That's right. In Freedom New York.

13 JUDGE SIPPEL: But the position is obviously that  
14 even though there was -- so they control -- I mean, they  
15 control legally in the sense of being a shareholder or  
16 having a controlled share of the stock, they have a  
17 controlling interest of 20 percent over and above actual  
18 control, over and above operational control, right?

19 MS. KIDDOO: No, no. No, no.

20 JUDGE SIPPEL: No?

21 MR. SPITZER: The control group that is at issue I  
22 believe, Your Honor, relates to Bartholdi. Bartholdi they  
23 owned -- the Milsteins in entirety. The entity which is  
24 essentially the 80/20 split is the new entity, Freedom.

25 JUDGE SIPPEL: Right.

1 MR. SPITZER: And that doesn't hold the licenses.

2 The licenses --

3 MS. KIDDOO: Are 100 percent.

4 MR. SPITZER: -- are 100 percent in Bartholdi  
5 which is owned 100 percent by the Milsteins.

6 JUDGE SIPPEL: No, I do understand that. But  
7 we're talking about the assets, right? Isn't this what the  
8 disclosure says? Is that 80 percent of the assets are not  
9 with Freedom?

10 MR. SPITZER: Eighty percent of those assets that  
11 are the subject of the asset purchase agreement.

12 MS. KIDDOO: Yes, not -- not --

13 MR. SPITZER: But that's --

14 JUDGE SIPPEL: Now, what other assets are there  
15 with respect to the license and what kind of -- these are  
16 going to be the transmitters and the wiring to the  
17 transmitters going into the buildings?

18 MS. KIDDOO: Some of the wiring but probably not  
19 all of it. I mean, electrical wiring, yes. The wiring that  
20 goes from the output point, say, of a receive site and down  
21 into serve customers within the building is not microwave.  
22 It's coaxial cable. And that asset was purchased by  
23 Freedom.

24 JUDGE SIPPEL: All right.

25 MS. KIDDOO: But that's not part of the microwave

1 network.

2 JUDGE SIPPEL: So if we just said hypothetically,  
3 if -- if Freedom didn't like what Bartholdi was doing in  
4 some context of its transmission and they got in some kind  
5 of a big argument, I guess they could just say well, we're  
6 not going -- Freedom could say we're not going to let you --  
7 we're not going to let you use our wiring in the buildings  
8 we purchased from you. Business-wise that may be a silly  
9 question, but just a more practical --

10 MS. KIDDOO: But they don't need the wiring in the  
11 building.

12 JUDGE SIPPEL: They don't need it.

13 MS. KIDDOO: Not to provide microwave services.

14 JUDGE SIPPEL: Then what did they buy it for.

15 MS. KIDDOO: I'm talking about Bartholdi doesn't  
16 need it --

17 MR. SPITZER: Bartholdi doesn't need it.

18 MS. KIDDOO: -- to by licensed microwave  
19 facilities.

20 MR. SPITZER: Freedom may need it --

21 MS. KIDDOO: Freedom needs it --

22 MR. SPITZER: -- to provide subscriber service.

23 JUDGE SIPPEL: Right, okay.

24 MR. SPITZER: But Bartholdi doesn't need it to  
25 provide the microwave service.

1 JUDGE SIPPEL: I see. Well, I -- I would say that  
2 pretty much covers it. I have other questions that I have  
3 written down, but I think that they've been addressed in  
4 other contexts of the discussion here. I want to give some  
5 more thought to the Bureau's concern, but you certainly --  
6 well, I'm not saying concern, but the Bureau's question with  
7 respect to going -- to running a parallel investigation on  
8 this issue rather than adding the issue. But I'm just going  
9 to have to go back and work with your pleadings. This has  
10 been very helpful to me.

11 Is there anything that -- I mean, I did express  
12 this concern about the 1.65 disclosure and I mean, I'm not  
13 going to try and hide it. I think that -- I think that  
14 companies or registrants or licensees that conduct business  
15 with the Commission, when they've got a point -- when  
16 they've got the language of a 1.65 staring them -- staring  
17 down at them have an obligation to take that a little bit  
18 more seriously.

19 MS. KIDDOO: Your Honor, if I could just -- I did  
20 not comment on that whole colloquy about that issue because  
21 frankly, as a non-party to this proceeding I don't see any  
22 possible way that Freedom New York could have had a Section  
23 1.65 obligation to report anything to this proceeding. To  
24 the extent that -- however, I would point out that to the  
25 extent that that is an issue that is of concern and Your



1 Honor feels that -- that it rises the level of a question  
2 that you'd like to address in this proceeding, it's a very  
3 narrow issue as to whether or not a Section 1.65 amendment  
4 or filing should have been made.

5 It certainly doesn't involve any real party in  
6 interest question, and frankly doesn't involve Freedom New  
7 York whatsoever. And I just wanted to point that out, that  
8 that's a very narrow technical compliance issue as opposed  
9 to a real party an interest issue designated in this  
10 proceeding that would involve the transaction.

11 JUDGE SIPPEL: Well, I think I -- I think I made  
12 that clear when I indicated my displeasure; that the issue  
13 we're here to talk about today, the big issue is the control  
14 issue. And I'm not going to get far afield with the 1.65  
15 concern now. But I -- it -- I'm just going to give  
16 everybody one more chance now. Is there anything -- you  
17 know, on a very, very narrow specific fact basis that you  
18 want to bring to our attention at this time, Mr. Beckner, or  
19 bring to my attention?

20 MR. BECKNER: I don't think that I have.  
21 Previously, there was one I guess disagreement that may be  
22 important. I want to make sure that you understand that  
23 this 15 million dollar hold back or note that you asked the  
24 Liberty/Freedom team over here, that is -- that is not as I  
25 read this agreement -- if you look at page 12 of the asset

1 purchase agreement of RCN --

2 JUDGE SIPPEL: Hold it just a minute. He lost his  
3 microphone there Can you hear him? Go ahead.

4 MR. BECKNER: I'm sorry. I'll talk louder.

5 JUDGE SIPPEL: He's hearing you. That's good.

6 MR. BECKNER: Okay. Good. That's not a vent in  
7 the common classic to the extent that we know it -- you  
8 know, I owe Mr. Harding here some money. What that is  
9 essentially is on a going forward basis, why Liberty Venue  
10 Enterprises is going to try to get more buildings for  
11 Freedom New York to sell to cable service. And if they get  
12 more buildings and they get more customers, then they're  
13 going to get paid.

14 And the 15 million dollars is in effect, if you  
15 look at this carefully, simply a cap on how much they're  
16 going to get paid. There's some -- there's some things  
17 redacted from my version here, you know, numbers that says,  
18 "Buyer shall pay to seller", and then it's redacted, "for  
19 each net eligible subscriber delivered by seller or to buyer  
20 in excess of", and then there's a redaction, "net eligible  
21 subscribers."

22 And the only point I want to make here is this is  
23 illustrating what I was saying in the beginning, is that  
24 these parties have a continuing relationship going forward  
25 and this particular provision sets that out in a sense

1     that -- that LIVE which I think -- I think if we did an  
2     investigation, what we'd find is the people that are LIVE  
3     are also the people who are Bartholdi. It is now and will  
4     continue in the future to be selling the -- the service to  
5     new buildings when that happened. And they're going to get  
6     paid for it out of this 15 million.

7             And the relevance is that is, again, is that in  
8     this sort of web of relationships, at the center of it is  
9     Freedom New York and everybody else is existing to serve  
10    Freedom New York

11            JUDGE SIPPEL: You mean, it's like a performance  
12    contract kind of a thing with LIVE, I mean, if they --

13            MR. BECKNER: Oh, yes, I mean, I think that's one  
14    way to describe it, is that in effect there's no obligation  
15    to pay them a penny unless they bring -- bring in more new  
16    customers. And then they'll get paid a redacted amount per  
17    customer I gather up to a maximum of 15 million dollars.

18            JUDGE SIPPEL: Is that -- well, let me see, let me  
19    hear how Freedom --

20            MR. MARTIN: That's not quite accurate there.  
21    There are two components. There is -- what Freedom bought  
22    on the closing date was roughly 30,000 subscribers. In  
23    order -- what Freedom was concerned about was issues  
24    relating to the licenses and making sure that when it  
25    acquired subscribers, there was no regulatory risk

1 associated with them. There were -- Freedom was also  
2 concerned about making sure that there was a way to serve  
3 the subscribers. There is a definition -- a detailed  
4 definition of eligible subscriber and what constitutes an  
5 eligible subscriber. That's different from what was  
6 acquired.

7 On the closing date, Freedom acquired subscribers.  
8 The pricing of the transaction was set up so that 25 million  
9 dollars was paid on the closing date. And that went -- when  
10 the existing subscribers met those eligibility requirements  
11 that were set up in the definition for eligible subscriber,  
12 the money out of the 15 million dollars would be released  
13 incrementally until we got to the 30,000 eligible  
14 subscribers. That's a different calculation from LIVE and  
15 Bartholdi marketing in the future and being paid for their -  
16 - a fee for their marketing services for generating new  
17 subscribers. It's -- it's not an easy transaction to  
18 understand.

19 MR. PETTIT: Your Honor, it's -- it's --

20 JUDGE SIPPEL: Mr. Pettit.

21 MR. PETTIT: It's all very interesting how this 15  
22 million dollars works, but I guess I have a more basic  
23 question. I don't understand how a debt owed by a purported  
24 real party in interest to a licensee is somehow an  
25 indication that the real -- that in this case Freedom

1 controls Bartholdi. I still -- if they really did, there  
2 would be no debt owed whatsoever. They'd be part and parcel  
3 of the same --

4 JUDGE SIPPEL: Well, now, wait just a minute  
5 because if I'm -- I mean, I'm going to check this, of  
6 course, in the papers. But let me ask the question this  
7 way, Ms. Kiddoo or -- anybody can answer this whoever knows.  
8 But what was the total? The total amount of money was what?  
9 Something like 60 million dollars?

10 MS. KIDDOO: The total transaction I think was  
11 roughly 40?

12 MR. MARTIN: The total consideration for the  
13 transaction was roughly 40 million dollars plus the 20  
14 percent interest

15 JUDGE SIPPEL: Oh, all right. Let me see, okay.  
16 That's right. So 20 -- and there was 25 million dollars  
17 that was paid up front or paid at the time of the closing?

18 MR. MARTIN: That's correct.

19 JUDGE SIPPEL: So then that leaves a balance of  
20 about 15 million that's due.

21 MR. MARTIN: That's correct.

22 JUDGE SIPPEL: Now, the 15 million that's due, is  
23 it like the way that I do it on -- you know, the way the  
24 bank is looking for money from me for my house purchase,  
25 that I pay so much a month or is there a balloon payment at

1 the end?

2 MR. MARTIN: Instead of your paying so much per  
3 month, it would be -- it would be you paying if your -- if  
4 you bought a house that needed some work and you needed some  
5 wiring done or the light bulbs didn't work. And you were  
6 paying when the light bulbs got fixed -- you had agreed to  
7 pay \$100,000.00 for your house but it was in rough shape and  
8 you needed the windows replaced. So you paid \$50,000.00 up  
9 front and then you paid, you know, a thousand dollars for  
10 each window that was replaced.

11 JUDGE SIPPEL: So, okay. So in other words -- in  
12 other words, the purchaser is holding back 15 million  
13 dollars until certain features are corrected -- well, until  
14 certain things are done and --

15 MR. MARTIN: And it's not -- to be clear, it's not  
16 Bartholdi that needs to do those things. There are  
17 conditions that Freedom can do for itself like making  
18 licenses irrelevant by hooking up buildings to a cable  
19 network as opposed to having the transmission services --  
20 having the programming delivered via microwave.

21 JUDGE SIPPEL: But they're going to need --  
22 they're going to need the cooperation of Bartholdi to make  
23 this -- to make this work, right, otherwise why would -- you  
24 know, why would it be a condition for Bartholdi getting  
25 paid?

1 MS. KIDDOO: It was part of what was negotiated.

2 JUDGE SIPPEL: All right. Well, I don't want to  
3 argue with you. But it just -- I think that Mr. Beckner has  
4 focused on a good point. I didn't develop it as far as I  
5 wanted to, but I'll go back and look at that again. Okay.  
6 Well, now this -- while you were answering, too, it just  
7 jogged my recollection. You know, in the Hart-Scott-Rodino  
8 filings, it's actually a two state file; that is, the first  
9 filing that's done is a very -- is a very slender file. You  
10 know, it's kind of almost going like a 1040EZ or something  
11 and that's when they determine whether or not you meet the  
12 standard.

13 And then when they come back with a second  
14 request, that's when you get socked for a lot of details.  
15 And I would think that in anticipation of the second  
16 request, that something like that subcontract agreement  
17 would be a very significant document for the ultimate review  
18 by the FCC.

19 MR. SPITZER: Your Honor, I think that it's  
20 quite -- with some certitude, there is a belief that with a  
21 second request in a transaction of this nature, when you  
22 look at the sub numbers and the market shares and you do an  
23 anti-trust analysis of this deal, that this was something  
24 that was so far below the radar screen of the authorities  
25 that there was a degree of confidence that there would not

1 be a second request. And frankly, we didn't even need the  
2 first threshold to get through the front door.

3 JUDGE SIPPEL: Well, that's -- that's --

4 MR. SPITZER: So our analysis was proven correct.

5 JUDGE SIPPEL: All right. In other words, the  
6 Hart-Scott-Rodino was really a diminimous thought by the  
7 time you got everything nailed down.

8 MR. SPITZER: Well, it wasn't a diminimous  
9 thought, but it was -- there was not -- there was a belief  
10 that it would not be a serious regulatory hurdle to overcome  
11 given the nature of Liberty's place in the marketplace in  
12 New York City.

13 JUDGE SIPPEL: Well, if you weren't worried about  
14 a second request then it was -- in terms of everything else  
15 that was being done, what you said is it was pretty far down  
16 the list.

17 MR. SPITZER: Well, no. It was paramount in the  
18 minds of the Milsteins because it delayed by in their view  
19 30 days when this transaction would close. So it was -- I  
20 can assure you there was enormous effort put into insuring  
21 that the filings could be done and could be done  
22 expeditiously.

23 MR. PETTIT: And completely.

24 MR. SPITZER: That's right.

25 JUDGE SIPPEL: But I'm not -- well, I don't want



1 to belabor this thing. But I'm not convinced that with that  
2 kind of a scenario under Hart-Scott-Rodino that that effort  
3 would have held back putting together or reducing to a full  
4 written agreement. The subcontract agreement in terms of  
5 the package that was given to me to look at goes to the very  
6 hear of it. I mean, the asset agreement, the service  
7 agreement, the subcontract agreement, I wouldn't want to put  
8 them in a hierarchy of one, two, three.

9 MR. SPITZER: Well, Your Honor, I can tell you  
10 that my recollection in terms of preparation of the  
11 materials for Justice and the FTC, there was never any  
12 thought given as to whether or not the subcontract agreement  
13 was ready to be included in that package because it just was  
14 never viewed as an issue that was necessary for that  
15 presentation.

16 JUDGE SIPPEL: Well, as I say, I acknowledge that  
17 in terms of the initial cast with Justice or FTC on whether  
18 or not you made the threshold. I'm not -- I wouldn't write  
19 it off that quickly with respect to a second request. But  
20 that's really not what we're here about. All right. I -- I  
21 -- we've taken a considerable amount of time on this. Is  
22 there anything else that the Bureau wanted to say before  
23 we --

24 MR. WEBBER: No, Your Honor. I believe our final  
25 pleading on the matter speaks to the Bureau's position and